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BEFORE THE HEARING EXAMINER
CITY OF SEATTLE

In the Matter of the Appeal of
NEIGHBORS OF 3447-9 22nd AVE WEST
of a decision issued by the Director,
Seattle Department of Construction and
Inspections.

Hearing Examiner File:
MUP 16-016 (W)

REPLY SUPPORTING
APPLICANT'S MOTION TO
DISMISS LAND USE APPEAL

REPLY

Appellants' Response to the Applicant's Motion to Dismiss, dated August 26, 2016,
("Appellants' Response") states that the basis for this Appeal is as follows:

The purpose of the appeal is to review with the Hearing Examiner the short-comings of the information provided to SDCI. We believe such short-comings, if left unaddressed, will potentially risk structural and environmental damages to adjacent properties. Assuring the accountability by the Applicant, the Applicant's professionals, the City approvers, and the future home owners is paramount.

Appellants' Response at 4, lines 21-25.

To address the issues raised in their Appeal, Appellants request the following relief:

- (a) Verify site boundaries with surveyor;
- (b) Visit the site prior to the hearing to observe existing conditions and to become familiar with what is being proposed to be modified;

REPLY SUPPORTING APPLICANT'S
MOTION TO DISMISS LAND USE APPEAL - 1

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- 1 (c) Provide corrected information on the ECA Checklist for review by the
2 Director;
- 3 (d) Identify protocol to address responsible parties to soil or tree failures that
4 would have otherwise not occurred had environmental conditions and
5 policies been maintained;
- 6 (e) Completing the investigations of the geotechnical engineer;
- 7 (f) Demonstrating the site is logistically capable of containing four SFR
8 including the access to four vehicles and bicycles;
- 9 (g) Complete the work of a civil engineer and architect;
- 10 (h) Resolve Code Compliance issues;
- 11 (i) Provide public notice if scope is indeed increasing the scope of
12 development from three buildings to four buildings.

13 Appellants' Response at 16, Lines 6-17.

14 Appellants continue to misunderstand the limited scope of appealable issues relating
15 to SDCI's SEPA review and continue to raise issues that are wholly outside this limited
16 scope.

17 Consistent with SMC 25.05.908, SDCI's decision, which is the subject of the appeal,
18 states that the scope of review of projects within ECA is limited to (1) documenting whether
19 the proposal is consistent with the City's ECA regulations in SMC 25.09; and (2) evaluating
20 potentially significant impacts on the critical area resources not adequately addressed in the
21 ECA regulations. *See* Applicant's Motion to Dismiss, Exh. C at 2. Like the Appeal,
22 Appellants' Response does not allege that the Applicant's proposal is either inconsistent
23 with the ECA regulations under SEPA; or that the project proposal will have a potentially
24 significant impact on critical areas that are not addressed in ECA regulations. Instead, the
25 Appellants believe that because they checked all of the boxes on the Notice of Appeal that
"the components of the appeal application are significantly broader in scope than just the

1 SEPA component that was published in the subsequent Notice of the Appeal.” Appellants’
2 Response at 2, lines 28-29. Checking a box does not make unreviewable issues suddenly
3 reviewable. SDCI’s decision, and therefore this Appeal, has a limited scope. This Appeal
4 does not include a review of every aspect of this project proposal, which is what the
5 Appellants seek:

6 the Appellants have no confidence that the Land Use approval following the
7 waived ECA and EIS Environmental requirements is trustworthy. We need
8 to know if the Applicant will be financial [sic] insured should the basic level
9 of geotechnical evaluation that was provided result in substantial changes or
damages to adjacent property or the Seattle Right-of Way (ROW).

10 Appellants Response at 8, lines 15-19.

11 As articulated in both the Appeal and Appellants’ Response, what the Appellants
12 really want are assurances that the project will comply with the SMC and all applicable
13 permitting requirements, as well as a review of every document submitted by the Applicant
14 and every decision by SDCI. While the Applicant has a duty to comply with both the SMC
15 and permitting requirements, the additional assurances and documentation that the
16 Appellants’ request are not authorized under the SMC and the Appellants are therefore not
entitled to such relief.

17 Hearing Examiner Rules of Practice and Procedure (“HER”) 3.02(a) reads as
18 follows:

19 An appeal may be dismissed without a hearing if the Hearing Examiner
20 determines that it fails to state a claim for which the Hearing Examiner has
21 jurisdiction to grant relief or is without merit on its face, frivolous, or brought
22 nearly to secure delay.

23 To the extent the Appellants seek information, drawings, and/or documents that are
24 not required under ECA regulation at this stage in the permit process, or that are not
25 necessary under SEPA, then the Hearing Examiner does not have jurisdiction to grant the
requested relief.

Consequently, because the objections raised by the Appellants are outside the limited scope of review, and because Appellants fail to demonstrate how the proposal is inconsistent with the ECA regulations under SMC 25.09 or that any of these issues will have a potential significant impact on the ECA not addressed under the SMC, the Appeal, and the objections raised therein, must be dismissed.

CONCLUSION

For the reasons set forth above, and for the reasons articulated in the Applicant's Motion to Dismiss, the Applicant respectfully requests that the Hearing Examiner dismiss the Appeal with prejudice.

Respectfully submitted this 29th day of August, 2016.

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CERTIFICATE OF SERVICE

The undersigned hereby declares that on August 29, 2016, the foregoing document was served on the following party in the manner indicated:

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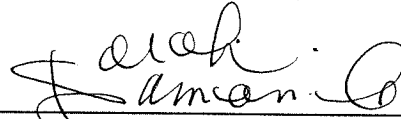
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DATED: this August 29, 2016 in Seattle, WA

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